



**The Comptroller General  
of the United States**

Washington, D.C. 20548

Jordan

## Decision

Matter of:      Magnavox Advanced Products and Systems Company

File:            B-230601

Date:            June 20, 1988

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### DIGEST

Where available funds have been reprogrammed due to spending shortfalls and a Department of Defense spending freeze, forcing cancellation of proposed modifications to others' contracts for additional work, protests by firm that wished to compete for that work are academic and therefore dismissed.

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### DECISION

Magnavox Advanced Products and Systems Company protests three sole-source procurements by the Naval Ocean Systems Center (NOSC) in the form of proposed modifications to contracts NOSC has with Rockwell International, Raytheon Company, and Texas Instruments (TI). Magnavox contends that, contrary to sole-source justifications prepared by NOSC, it is capable of performing the covered work and should have been allowed to submit proposals for it.

The protest is dismissed.

In March 1985, Magnavox and Rockwell were awarded parallel contracts to design and fabricate a chip set and integrate it into a global positioning system (GPS) receiver which would allow ground, air, and sea forces the ability to position tactical forces and/or targets "instantaneously." Options to these contracts called for the design and production of a hand held unit known as a small unit navigation system (SUNS) for use by Marine Corps ground troops.

By December 1986, Magnavox had overrun the original contract cost ceiling and was issued a stop work notice. In December 1987, after reviewing Magnavox's cost to complete (CTC) proposal and its past cost, scheduling, and delivery history, NOSC terminated the Magnavox contract for the convenience of the government.

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Since Rockwell anticipated completion of a functional chip set by March 1988, NOSC, in January 1988, published notice in the Commerce Business Daily (CBD) that it intended to negotiate a modification with Rockwell for final design and fabrication of the SUNS. In support of its sole-source procurement, in March 1988, NOSC prepared and executed a justification and approval (J&A) pursuant to the authority of 10 U.S.C. § 2304(c)(2) (Supp. III 1985) as implemented by Federal Acquisition Regulation (FAR) § 6.302-2 (FAC 84-28) (unusual and compelling urgency). Magnavox sought to participate in this procurement.

In February 1988, NOSC published CBD notices of its intent to negotiate with Raytheon and TI for follow-on modifications of contracts awarded to them pursuant to a February 1987 broad agency announcement. That announcement was for proposals for fundamental research and development of miniature missile guidance navigation packages which would include miniature GPS receivers, control processors, and gyroscope/inertial measurement units. Magnavox had submitted a proposal for this effort, but was unsuccessful.

After receipt of the Raytheon and TI development studies, the government sought the follow-on efforts so that Raytheon and TI could demonstrate whether their GPS receiver designs were feasible. NOSC executed J&A's in support of the sole-source procurements, relying upon 10 U.S.C. § 2304(c)(1), as implemented by FAR § 6.302-1 (supplies available from only one responsible source).

Magnavox expressed interest to NOSC in proposing on these efforts and alternatively protested that they appeared to be a reprocurement of the Magnavox chip development work under its terminated contract. Dissatisfied with assurances from NOSC that these contract modifications dealt with GPS subsystems unrelated to the SUNS effort, Magnavox protested to this Office.

In general, Magnavox criticizes the adequacy of the sole-source J&A's to justify the procurements. With regard to the Rockwell sole-source, Magnavox also contends that it was not furnished sufficient information on which to propose and that funding laws would be violated if Rockwell were allowed to complete Magnavox's terminated contract. With regard to the Raytheon and TI sole-source efforts, Magnavox contends that it was subjected to a de facto debarment without due process of law.

NOSC responds that the Rockwell sole-source is justified because of its urgent need and the fact that only Rockwell is in a position to complete the chip set and proceed to SUNS final design development. It further asserts that it

gave Magnavox sufficient information to submit a proposal and denies that funding of the proposed Rockwell SUNS effort would violate any funding requirements. It likewise denies that Magnavox was de facto debarred since the Raytheon and TI efforts require follow-on work to demonstrate unique proprietary designs of which Magnavox could never demonstrate the feasibility.

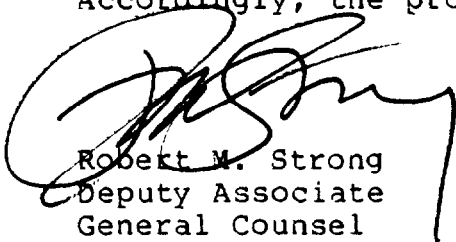
It is unnecessary for us to resolve these protest issues since circumstances have arisen which render them academic. By letter of May 19, 1988, NOSC informed our Office that there are no longer available funds for the Rockwell sole-source SUNS effort. As a result, all contractual and precontractual work on that effort will cease and the sole-source procurement will be canceled. In anticipation of funding for the original contract, Rockwell is to continue in the production of the chip set and miniature GPS receiver, within the scope of that contract. By letter dated June 10, 1988, NOSC informed this Office that the Raytheon and TI efforts likewise were to be canceled. Due to delays attendant to the protest, available funds had been reprogrammed and even had the funds been available, a Department of Defense spending freeze prevented NOSC from proceeding with the contract modifications. It also noted that the two concerns had submitted proposals in excess of the government's original estimates. NOSC further advised that if it seeks to reprocure these efforts, it will ensure that Magnavox is notified.

We find that the lack of funding for these efforts, forcing their cancellation, renders the protest of Magnavox academic. See James M. Carroll--Reconsideration, B-221502.3, Mar. 24, 1986, 86-1 CPD ¶ 290. In so holding, we recognize that Magnavox maintains that the facts of this case indicate that the SUNS portion of its protest is not academic. Magnavox infers that since there was no allegation that Rockwell had missed any contractual milestones and had apparently received more than sufficient funds, Rockwell must have achieved the original contract requirements long ago (February 1987), if it had not already delivered them. From this, Magnavox speculates that any further work by Rockwell will necessarily be SUNS-related. Thus, Magnavox urges us to consider as a protest ground that NOSC intends to circumvent competition by effectively modifying the existing contract to produce SUNS-type hardware. Alternatively, if we determine the SUNS cancellation renders the protest academic, Magnavox requests that we consider its allegation a new protest.

We do not find Magnavox's speculation that NOSC intends to circumvent SUNS competition to be a valid reason for us to

consider the merits of the protest. See Earth Resources Consultants, Inc.--Request for Reconsideration, B-220559.2, Nov. 26, 1985, 85-2 CPD ¶ 608. We find Magnavox's speculation unpersuasive. Unlike Magnavox, we have been provided a copy of Rockwell's CTC proposals for the original and SUNS efforts. Our in camera review of these proposals reveals nothing from which to infer that Rockwell has already completed the original contract requirements. Further, there is no indication that any of the continued work will include SUNS specific requirements. Likewise, we have no reason to infer that NOSC will allow or pay Rockwell to accomplish SUNS requirements under the guise of completion of the existing contract.

Accordingly, the protest is dismissed as academic.



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